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Filing Date	November 8, 2001
First Named Inventor	Blouin <i>et al.</i>
Group Art Unit	1797
Examiner Name	Alexander, Lyle
Attorney Docket No.	INL-032
Confirmation No.	2442

ENCLOSURES (check all that apply)

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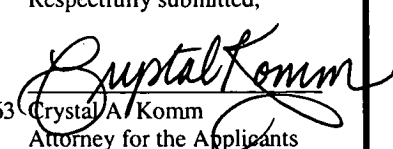
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Respectfully submitted,

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PATENT
Attorney Docket No.: INL-032

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPELLANTS: Blouin *et al.* CONFIRMATION NO.: 2442
APPLICATION NO.: 10/007,031 GROUP NO.: 1797
FILING DATE: November 8, 2001 EXAMINER: Alexander, Lyle
TITLE: Sample Well Strip

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF IN REPLY TO EXAMINER'S ANSWER

Dear Sir:

This paper is responsive to the Examiner's Answer mailed from the U.S. Patent and Trademark Office on October 24, 2007. Appellants believe no fees are necessary for consideration of this paper. However, if a fee is required, please charge Deposit Account No. 50-1721.

REMARKS

Rejection of Claims 1, 3-10, 12-16, and 27-35 under 35 U.S.C. 102(b) in view of Franchere (U.S. Patent No. 5,285,907)

Independent claim 1 recites a sample holder system for holding a plurality of samples for use in an automated sample analyzer. The sample holder system comprises a first well strip comprising a plurality of connected wells arranged in a linear array. Each of the plurality of wells is for containing a fluid sample therein.

Independent claim 12 recites an interlockable well strip comprising a plurality of connected wells, each of said plurality of wells for containing a fluid sample therein.

Independent claim 27 recites a sample holder system comprising a first well strip comprising a plurality of connected wells, each of said plurality of wells for containing a fluid sample therein.

Independent claim 35 recites a sample holder system comprising a first well strip comprising a plurality of wells for containing a fluid sample therein.

Appellants submit that Franchere does not teach a well for containing a fluid sample within the scope of Appellants' claimed invention.

Appellants have described the teachings of Franchere in their Appeal Brief originally filed on June 21, 2007, the contents of which are incorporated herein. In particular, Franchere teaches laboratory container support arrays, *e.g.*, test tube racks for "accommodating different size specimen containers...for handling in the laboratory" (abstract). Franchere teaches that these support arrays are composed of individual modular units that can be snapped together. The side wall panels of the modular units have openings in them to reduce the quantity of materials required to make the modular units and to reduce their weight (col. 3, lines 1-4; *See, e.g.*, FIGS. 1-2). Applicants submit that because the modular units have holes in the side walls, Franchere's modular units, in and of themselves, cannot contain a fluid. Accordingly, Appellants submit that Franchere's modular units are not wells for containing a fluid sample within the meaning of the claimed invention.

In the Examiner's Answer, the Examiner asserts at pages 4-5 that "[t]he Office has properly read the claimed 'wells' on the taught modular units (10) with openings (26)... ." Further, the Examiner asserts that even though Appellants have claimed "each of said plurality of wells for containing a fluid sample therein[,] [t]he instant claim language only requires th[e] capability to contain a fluid sample [as] [n]o specific structure of the well has been claimed." On this basis, the Examiner asserts that "the wells taught by Franchere have the capability for containing a fluid sample therein" because the modular units can contain a specimen container. (See Examiner's Answer, page 4). Appellants respectfully disagree.

Appellants submit that the Examiner's interpretation of the claim term "well" is improper. Proper interpretation of claim terms in patent applications requires that the Examiner "give [the] claims their broadest reasonable construction in light of the specification as it would be interpreted by one of ordinary skill in the art." *Phillips v. AWH Corp.*, 415 F.3d 1303, 1316, 75 USPQ2d 1321 (Fed. Cir. 2005).

Further, as stated at MPEP § 2111.01, "the words of the claim must be given their plain meaning unless the plain meaning is inconsistent with the specification." In other words, "ordinary, simple English words whose meaning is clear and unquestionable," absent an indication that their use in a particular context changes their meaning "mean exactly what they say." *Chef America, Inc. v. Lamb-Weston, Inc.*, 358 F.3d 1371, 1373, 69 USPQ2d 1857 (Fed. Cir. 2004).

Accordingly, Applicants submit that recitation of the term "well" in Appellants' claims refers to a cavity or reservoir for directly holding a fluid sample and that a skilled artisan would understand this to be the plain meaning of the term, regardless of whether Applicant has claimed a "specific structure" of a well, as asserted by the Examiner.

The plain meaning of a claim term refers to the term's "ordinary and customary meaning" to a person of skill in the art. See MPEP § 2111.01 and *Phillips*, 415 F.3d at 1313. Appellants submit that the "plain meaning" of the term "well" would be understood by a person skilled in the art of sample holders to refer to a cavity or receptacle capable of directly containing a fluid. Appellants submit that a skilled artisan would not interpret the term "well" to include a perforate structure even if that structure could support another container containing a fluid as asserted by the Examiner. (See Office action, for example, at page 5, lines 13-16).

Furthermore, anyone who has used a well strip or well plate for diagnostic assays knows that a fluid can be placed directly into a well and it will not leak out. Accordingly, Appellants submit that the term "well" as used in the claims and understood in the art of sample holders for use in diagnostic assays refers to a cavity or receptacle capable of directly containing a fluid placed in it and as such, does not have perforations that would allow the fluid to leak out. Surely, no person reading the claim would assume that the claimed well is leaky unless "leaky wells" were expressly recited in the claim.

Further, Appellants use of the term "well" in the specification reflects the definition of the term "well" as understood by a skilled artisan. For example, at page 1, lines 10-12, Applicants state that the "sample well strip is typically used for holding samples, such as aliquots of a reaction mixture, environmental samples, blood, urine or fractions of samples thereof... ." In other words, the specification describes a well strip as something that directly holds a fluid sample. No where in the specification have Appellants defined a well in a well strip contrary to the term's meaning in the art, *i.e.*, that the wells are perforated or leak. Accordingly, Appellants submit that a skilled artisan would understand the meaning of the term "well" as claimed by Appellants to mean a receptacle or cavity for directly holding a fluid.

Given that the broadest reasonable interpretation of the term "well for containing a fluid sample" must be consistent with the specification and that claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art, *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1364, 70 USPQ2d 1827 (Fed. Cir. 2004), Appellants submit that the Examiner is incorrect in interpreting the term "well for containing a fluid sample" to read on the perforate structures of Franchere, namely Franchere's modular units, which as described cannot directly contain a fluid.

For these reasons, Appellants respectfully request that the rejection of claims 1, 3-10, 12-16, and 27-35 under 35 U.S.C. 102(b) in view of Franchere be reconsidered and withdrawn.

CONCLUSION

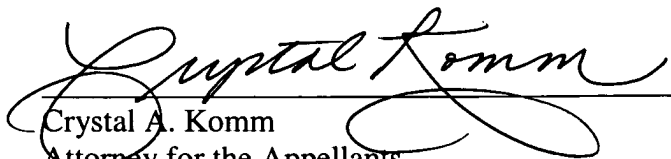
Appellants respectfully request that the Board consider the arguments presented herein in addition to the arguments presented in the Appeal Brief filed by Appellants on June 21, 2007. Appellants request the rejections of the claims in view of Franchere be reconsidered and withdrawn.

Respectfully submitted,

Date: December 20, 2007
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